

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

SCHUYLER PYATTE BARBEAU,

Defendant.

NO. CR15-391 RAJ

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE AND FOR  
RETURN OF PROPERTY**

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, Todd Greenberg, Assistant United States Attorney for said District, and Jessica Manca, Special Assistant United States Attorney for said District, respectfully responds to the defendant's Motion to Suppress Evidence and for Return Property (Dkt. No. 85).

Barbeau's Motion appears to seek two types of relief: (a) The suppression of nearly all of the seized evidence in this case, based upon alleged Fourth Amendment violations; and (b) the return of the seized evidence pursuant to Rule 41(g). The motion to suppress should be denied in full because, as discussed below, all of the evidence in this case was lawfully seized either pursuant to federal search warrants or under clearly applicable exceptions to the warrant requirement. The motion for return of property also

1 should be denied because it is premature – all of the seized evidence was lawfully seized  
 2 and constitutes evidence relevant to both the guilt and sentencing phases of this pending  
 3 criminal case. At the conclusion of the case, the government will engage with Barbeau  
 4 regarding what property can be returned to him, and he will have the ability to file  
 5 another motion for the return of property (if necessary) at that time.

### 6 **BACKGROUND**

7 Beginning on or around October 19, 2015, Barbeau arranged to sell a short-  
 8 barreled rifle (which was also a machinegun) to a third-party buyer for \$5,000.00,  
 9 through a Confidential Human Source (“CHS”). Barbeau gave the rifle to the CHS to be  
 10 sold. Instead of facilitating the sale, the CHS gave the rifle to the Federal Bureau of  
 11 Investigation (FBI) on November 22, 2015. Complaint ¶¶ 7-16 (Dkt. No. 1). When the  
 12 FBI took custody of the rifle, it was inside a “Pelican Gun Case,” and the case included  
 13 ammunition, rifle magazines, and one additional rifle barrel.

14 On December 6, 2015, Barbeau was arrested, pursuant to an arrest warrant, for  
 15 unlawful possession of a short-barreled rifle. Exhibit 1. Before his arrest, the FBI had  
 16 received information about Barbeau’s activities that raised significant concern for public  
 17 safety generally, and for officer safety specifically. *Id.* ¶¶ 5-6, 12.

18 When Barbeau was arrested, he was driving in a vehicle with Allen Aenk. Both  
 19 Barbeau and Aenk were detained at the scene. At the time of his arrest, Barbeau had a  
 20 loaded pistol on his hip and a knife attached to his waistband, which the FBI seized  
 21 without incident.

22 At the time of Barbeau’s arrest, FBI agents had already obtained a search and  
 23 seizure warrant for Barbeau’s cell phone. At the scene of the arrest, an agent asked  
 24 Barbeau about his phone, and Barbeau indicated that his cell phone was in a dufflebag  
 25 that he set down on the roof of the vehicle shortly before his arrest. The agent asked  
 26 Barbeau if he could verify that the phone was in Barbeau’s bag, and Barbeau said,  
 27 “Fine.” The agent retrieved Barbeau’s Motorola Droid Turbo cell phone from the bag and  
 28 the FBI searched that phone pursuant to the warrant. Exhibits 2, 5. FBI agents then

1 searched the vehicle that Barbeau had occupied and recovered a tactical vest with body  
2 armor.<sup>1</sup>

3 While Barbeau was being arrested, federal and local law enforcement officers  
4 were simultaneously executing a search warrant on the Aenk's property, where Barbeau  
5 was living at the time. Exhibit 3. While executing that search warrant, investigators  
6 seized the following items from Barbeau's trailer:

- 7 • One (1) plastic bag containing .223 ammunition;
- 8 • Seven (7) loaded .223-caliber rifle magazines;
- 9 • One (1) Motorola Droid RAZR mobile phone, Model XT912;
- 10 • One (1) nylon bag containing a crimping tool and tape;
- 11 • Documents of dominion and control in Barbeau's name, including a Verizon  
12 bill, government identification cards, and a record book.

13 Investigators also seized two plastic containers from Barbeau's vehicle (one large and  
14 one small), both of which contained firearm accessories.

15 From their investigation, FBI agents knew that Barbeau had used his mobile  
16 phone(s) to take photographs of the short-barreled rifle at issue in this case. Based on this  
17 information, FBI agents applied for and obtained search warrants for both of Barbeau's  
18 mobile phones. Exhibits 2, 4-5. Both of the Motorola phones contained photographs of  
19 the rifle.

20 At this time, the United States anticipates admitting the following items of  
21 physical evidence at trial:

- 22 (1) One AR-15 rifle with a 10.5 inch barrel and drop-in auto sear;
- 23 (2) One Motorola Droid Turbo cell phone;
- 24 (3) One Motorola Droid RAZR cell phone, Model XT912.

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27 <sup>1</sup> The government believes that this is the item Barbeau refers to as a "Plate Carrier." *See* Mot. to Suppress Evidence  
28 at 1 (Dkt. No. 85).

1 The government also intends to offer photographs of the rifle that were found on  
 2 Barbeau's phones. Some of those photographs also depict Barbeau's tactical vest, pistol,  
 3 and other firearms accessories, because Barbeau often photographed those items together.

## 4 ARGUMENT

### 5 **I. MOTION TO SUPPRESS EVIDENCE**

6 With respect to his motion to suppress evidence, Barbeau has the burden to  
 7 establish that his Fourth Amendment rights were violated by the seizure. *United States v.*  
 8 *Caymen*, 404 F.3d 1196, 1199 (9th Cir. 2005). When evidence is seized without a  
 9 warrant, it is the government's burden to show that an exception to the warrant  
 10 requirement applies. *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001).

11 Barbeau's motion to suppress should be denied in full because all of the evidence  
 12 in this case was lawfully seized either pursuant to federal search warrants or under clearly  
 13 applicable exceptions to the warrant requirement.

#### 14 **A. Evidence Seized in Plain View.**

15 The short-barreled AR-15 rifle and associated items (the gun case, flash  
 16 suppressor, magazines, ammunition, and long AR-15 barrel) were seized from the  
 17 possession of the CHS as items of contraband and evidentiary value in plain view.  
 18 Complaint ¶¶ 15-16 (Dkt. No. 1.); *see also Horton v. California*, 496 U.S. 128, 133  
 19 (1990).

#### 20 **B. Evidence Seized During a Search Incident to Arrest.**

21 Barbeau had a loaded .45-caliber pistol and a folding knife on his person when he  
 22 was arrested; therefore, these items were properly seized during a search incident to  
 23 arrest. *Chimel v. California*, 395 U.S. 752, 762-63 (1969) ("When an arrest is made, it is  
 24 reasonable for the arresting officer to search the person arrested in order to remove any  
 25 weapons that the latter might seek to use in order to resist arrest or effect his escape").  
 26 Barbeau's duffle bag (and all of the property inside of it) was in his hand at, or  
 27 immediately preceding, the moment of his arrest and was also properly seized incident to  
 28

1 his arrest. *Id.* at 763 (allowing law enforcement to search both the arrestee’s person and  
2 the area “within his immediate control”).

3 **C. Evidence Seized Pursuant to *Arizona v. Gant*.**

4 Under *Arizona v. Gant*, 556 U.S. 332, 351 (2009), law enforcement officers may  
5 search a vehicle incident to its occupant’s arrest if it is reasonable to believe the vehicle  
6 contains evidence of the offense of arrest. The FBI knew that Barbeau frequently traveled  
7 with a rifle, body armor (tactical vest), and a helmet in his vehicle. Complaint ¶ 6 (Dkt.  
8 No. 1). It was therefore reasonable for them to believe that Barbeau’s tactical vest was an  
9 item of evidentiary value and that it would be found inside the vehicle.<sup>2</sup>

10 **D. Evidence Seized Pursuant to a Search and Seizure Warrant.**

11 The Motorola Droid Turbo cell phone was seized pursuant to a warrant that  
12 specifically authorized the officers to seize any cell phones in Barbeau’s possession at the  
13 time of his arrest. Exhibit 2.

14 The Motorola Droid RAZR cell phone was seized pursuant to a search warrant  
15 that authorized officers to seize any items containing photographic evidence of the crimes  
16 listed in the warrant. Exhibit 3. As noted above, in this case the officers had probable  
17 cause to believe that Barbeau used cell phones to photograph the short-barreled rifle and  
18 to store photographs of the rifle. Importantly, the officers initially only seized the RAZR  
19 phone and subsequently obtained a separate warrant authorizing it to be searched for  
20 evidence. Exhibit 4.

21 The ammunition and plastic containers containing firearms accessories were all  
22 seized pursuant to a warrant that expressly authorized the seizure of such evidence.  
23 Exhibit 3; *see also United States v. Beusch*, 596 F.2d 871, 877 (9th Cir. 1979) (permitting  
24  
25

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26  
27 <sup>2</sup> Because the FBI agents also had information suggesting that Barbeau possessed explosive materials, the search of  
28 the vehicle was also justified under the exigent circumstances and officer safety exceptions to the warrant requirement.

1 law enforcement to seize and search “evidence reasonably related to the purposes of the  
2 search”).

3 Each Motorola cell phone was ultimately searched pursuant to a warrant. Exhibits  
4 2, 4-5.

## 5 **II. MOTION FOR RETURN OF PROPERTY**

6 Barbeau’s motion for return of property should be denied because it is premature.  
7 All of the seized evidence constitutes evidence relevant to both the guilt and sentencing  
8 phases of this pending criminal case, and therefore the government is entitled to retain the  
9 property until it is no longer needed as evidence. *United States v. Mills*, 991 F.2d 609  
10 (9th Cir. 1993) (“[A] Rule 41[g] motion is property denied if . . . the government’s need  
11 for the property as evidence continues.”). At the conclusion of the case, the government  
12 will work with Barbeau regarding what property can be returned to him, and he will have  
13 the ability to file another motion for the return of property (if necessary) at that time.<sup>3</sup>

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26 <sup>3</sup> For the same reasons, Barbeau’s request to inspect the seized evidence under Rule 16(a)(1)(E) should be denied as  
27 premature. According to his Motion, Barbeau seeks to conduct this inspection in order to gain a better  
28 understanding of the total universe of property that should be returned to him. At the conclusion of the case – when  
the property is no longer needed for evidentiary purposes – the government will work with Barbeau to ensure he has  
a full understanding of the seized property.

**CONCLUSION**

All of the evidence in this case was lawfully seized, and the items of evidence cannot leave FBI custody before the criminal matter is resolved. For the foregoing reasons, Barbeau's Motion to Suppress Evidence and Return Property should be denied.

DATED: May 12, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 12, 2017, the foregoing document was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties. I further certify that, on the same date, a copy of this motion was mailed to Schuyler Barbeau, defendant *pro se*, at the following address:

Federal Detention Center - SeaTac  
Reg: 46153-086 Unit: DB  
P.O. Box 13900  
Seattle, WA 98198-1090

/s/ Jessica Manca

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